IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 169 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ROSHANBHAI PYARALIBHAI NARSIDANI - Applicant(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :

MR JB DASTOOR for Applicant(s) : 1,
Mr.P.D.Bhate, APP for Respondent(s) : 1 - 2.
MR SN THAKKAR for Respondent(s) : 3 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20/09/2005

CAV JUDGMENT

1. Rule. Mr.Bhate, learned APP waives service of rule for the respondent nos. 1 and 2 and Mr. Saurabh Amin for Mr.Satyan Thakkar waives service of rule for

respondent nos. 3 and 4.

2. By filing this revision application, the petitioner has prayed to cancel the order dated nil passed by the Judicial Magistrate, First Class, Dhanduka granting bail to respondent nos. 3 and 4.

3. It appears from the record that pursuant to the incident that has occurred on 30.01.2004 the offence under Sections 307, 326, 147, 148, 149, 324, 504, 506(2), 114 and 403 of Indian Penal Code was registered before Ranpur Police Station, Dholka, which was registered as CR.No-I -3/04. The said first information report was lodged by the complainant – petitioner herein against the accused (1) Jivabhai Mayabhai, (2) Siddhraj Jivabhai, (3) Rambhai Jivabhai and other two unknown persons. It appears from the record that respondent no.3 gave cross-complaint which was registered as C.R.No. I-4/04 for the offence punishable under sections 143, 144, 427, 504, 506(2) and 114 of Indian Penal Code.

4. It is the case of the petitioner – complainant that because of two head injuries caused by respondent nos. 3 and 4 by inflicting farshi blows, the brother of the complainant i.e. Rajubhai was hospitalised at Ranpur, where the first aid treatment was given by the Medical Officer of Referal Hospital and Community Health Centre, Ranpur and since the condition of the victim was deteriorating, the patient was transferred to V.S.Hospital, Ahmedabad immediately and was admitted in the emergency ward, where C.T.Scan, X-ray and other tests were performed. It is also the case of the petitioner that, thereafter, the victim was admitted in a private hospital i.e., Shreyas Heart Care and Medical Hospital from 05.02.2004 to 14.02.2004.

5. It appears from the record that the Police Sub-Inspector of Ranpur Police Station addressed a letter on 08.02.2004 to the Judicial Magistrate, First Class, Dhanduka and requested to delete Section 307 of I.P.C., from the C.R. I-3/04. The Judicial Magistrate, First Class, Dhanduka passed the order below the said letter directing to keep the said letter with the FIR. Thereafter, the Police Sub-Inspector, Ranpur Police Station addressed another letter to the Judicial Magistrate, First Class, Dhanduka on 03.03.2004 for deletion of Section 326 and the said letter was directed to be kept with the FIR by the Judicial Magistrate, First Class. Thereafter, on 06.03.2004, accused no.1 and 2 were produced by the Police Sub-Inspector before the Judicial Magistrate, First Class along with the production report and ultimately the Judicial Magistrate, First Class, Dhanduka was pleased to release the accused nos. 1 and 2 on regular bail for the offence punishable under Sections 324, 147, 148, 149, 506(2) and 493 of I.P.C. Against this order, the present Criminal Revision Application had been preferred by the petitioner for cancellation of bail under Section 439 (2) of the Criminal Procedure Code, 1973.

6. Heard the learned advocates for the parties.

7. The present criminal revision application has been filed under Section 439(2) of the Code of Criminal Procedure, 1973 ("the Code" for short) for cancellation of regular bail granted by the Judicial Magistrate, First Class, Dhanduka. Section 439(2) of the Code reads as under :

> "A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

8. It can, therefore, be seen that Section 439(2) of the Code confers jurisdiction on the

High Court or Court of Sessions to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. It is pertinent to note here that power to take back in custody an accused who has been released on bail has to be exercised with care and circumspection and the same is to be exercised in appropriate cases where it is clear that the accused is interfering with the course of justice by tampering with the witnesses.

9. The question which is required to be considered by this Court is, whether the regular bail granted by the Judicial Magistrate, First Class, Dhanduka deserves cancellation or not ?

10. It is now well settled that the bail can be cancelled if the circumstances or the grounds so arise as stated hereinbelow :

(1) When the accused was found tampering with the evidence either during the investigation or during the trial.

(2) When the person on bail commits similar offence or any heinous offence during the period of bail.

(3) When the accused has absconded and trial of the case gets delayed on that account.

(4) When the offence so committed by the accused, that had created serious law and order problem in the society and accused had become a hazard on the peaceful living of the people.

(5) If the High Court finds that the lower Court granting bail has exercised its judicial power wrongly.

(6) If the High Court or Sessions Court finds that the accused has misused the

privilege of bail.

(7) If the life of the accused itself be in danger.

11. It is required to be noted that cancellation of bail would amount to review of a decision already made and can by and large be permitted only if by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. In the present case, the investigating officer has filed the report dated 08.02.2004 for deletion of Section 307 of I.P.C. The Investigating Officer has also filed another report dated 03.03.2004 for deletion of Section 326 of I.P.C. As stated above, therefore, what is required to be considered is, whether the accused was found in tampering with the evidence whether during the investigation or during the trial and that there is reasonable apprehension that they will continue to indulge in that course of conduct, if they are allowed to remain at large. Learned advocate appearing for the petitioner - complainant has failed to satisfy this Court that the accused are indulging in the activities or committing the breach of the conditions on which they are released on regular bail.

12. Under the circumstances, I do not find any substance in any of the contentions raised by the learned advocate appearing for the petitioner for cancellation of bail of respondents no. 2 and 3. In the result, the petition fails and the same is required to be dismissed. Accordingly, the petition stands dismissed. Rule is discharged.

(SHARAD D DAVE, J)

srilatha